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App. F. IX-4

Previous References

1930.
(St A)

File No. 61-30.

Serial Nos. 1-5

Reserve

Later References
Sett. Dep 66/36
St/Paper 593
-S&I-46(1-2)

General and Revenue Secretariat.

S&A 8-55 (1-2)

Serial Nos. 5

Part B for March 32

SUBJECT.

Re Succession to the Hagalwadi Pallegar Political pensions drawn by late Sugamoharaj and Devammaji

To Comptroller. H 6992 Dy 11.3.32.

Directs for the reasons stated, that the above Pallegar pensions be lapsed to Govt.

NOTES.

From the Comptroller to Government.

Letter No. S. H. T. 781, dated 11th—16th August 1930, forwards for the orders of Government the report of the State Huzur Treasury Officer, Bangalore, in the matter of the succession to the Hagalvadi Pollegar Political Pension which has fallen vacant by the demise of the last holder.

The State Huzur Treasury Officer's report gives a detailed history of the case and the merits of each claim are also discussed therein. The files in this office Nos. 46, 47 and 47(A) are also put up. The following brief note is submitted :—

2. The original grantee of the pension by Dewan Purniah is one Soogappah Naik of the Hagalvadi family who having married the sole surviving member of the Kenchanagudda family, *viz.*, Rani Rammavva became virtually the sole representative of the two families. Henceforward the Kenchanagudda family became regarded as merged in the Hagalvadi family. According to the geneological tree on P. P. 5 of the records (File No. 47) put up below, Soogappah had no sons and adopted one Veerappaji who enjoyed the pension till his death on 31st December 1877. The amount of pension at his death was Rs. 148-10-7. This was subsequently raised to Rs. 222-6-10 by the addition of 50 per cent and later to Rs. 270 by another increase in Government Order No. 2—P. & A.—G. F. 104 of 92, dated 3rd/6th July 1894.

3. Soogappah's brother Chennaveerappa was also in the enjoyment of a pension of Rs. 22-9-7 in 1812. On his death in 1845, it was given to his adopted son Nanjappah, who having died in 1845, was succeeded by his widow Basavamma who held it for life and the same lapsed to Government *vide* Endorsement P. P. 17 of File no. 47 given to the son-in-law and grandson of the deceased. This will be useful in connection with the consideration of the claim of Nanjundappa (no. 5) and also C_2 and C_6. This clearly sets at rest the contention that a "Douhitra" has a claim to the pension of his grandfather (mother's father).

4. Veerappaji married simultaneously two uterine sisters—Thayammaji and Devammaji, daughters of the late Raja of Coorg. Thayammaji, the elder wife had three sons and two daughters while the younger had two sons. On the death of Veerappaji, the pension was registered in the name of Basavalingaraja, the eldest son of the elder wife for the maintenance of himself and the other members of the family. On Devammaji's demur that her step-son Basavalingaraja was not properly maintaining her, Government sanctioned an allowance of Rs. 30 per mensem to her out of the family pension for life, subject to reversion to Basavalingaraja and other representatives of the family.

5. Shortly after, the brothers fell out and the remaining pension of Rs. 240 was equally divided among the three brothers—Basavalingaraja, Sughandaraja and Chennaviraraja, the sons of Thayammaji each getting Rs. 80.

6. Basavalingaraja died in 1918 leaving behind his widow Parvathammaji and a daughter Thayammaji by another wife. The pension of Basavalingaraja was granted to his widow Parvathammaji. It may be noticed that the claim of the daughter, Thayammaji for this pension was neither preferred nor considered.

Chennaveeraraja died in 1920 as a widower without issue and his pension of Rs. 80 was granted to his elder brother Sughandaraja.

7. Sughandaraja died on 20th May 1929 without issue and the pension of Rs. 160 (his own pension of Rs. 80 plus the pension of Rs. 80 of his deceased brother Channaveeraraja) is now contested by six claimants, *vide* page 6 of State Huzur Treasury Officer's report. The merits of each claimant are examined below :—

8. (1) *Sadasivaraja.*—He is the step-brother of the deceased Sughandaraja, being the son of Veerappaji by his second wife Devammaji.

Sadasivaraja has been debarred from claiming any share in the Hagalvadi family pension on the ground of his adoption to another family. His claim to a share in his father's pension was accordingly rejected so far back as 1891. The judgment of the Sub-Judge's Court of Benares on which he now relies for a claim is nothing new, since this was also considered along with other aspects of the claim before it was rejected in Government Order dated 15th January 1891. He has adduced no further tangible evidence to establish his claim which does not warrant any reconsideration. The circumstance that on the death of Sughandaraja he was put in possession of the deceased's properties by the Amildar of the Taluk does not perhaps give him any new status in the Hagalvadi family. The Amildar-Magistrate has not considered in his proceedings the fact of Sadasivaraja's adoption to another family—presumably he was not aware of it at all. *In the absence of other claimants*, it seemed to him that Sadasivaraja was the proper claimant, Thayammaji, daughter of Basavalingaraja having no objection to the deliverance of the property to Sadasivaraja. The Amildar's order does not preclude other claimants to the property from contesting the claim later. Moreover, the situation at the time was that the properties which were presumably in the possession of the concubines of the deceased had to be taken possession of by the Police, the concubines ejected and the properties handed over to some claimant. Even if Sadasivaraja has a right to the private property of the deceased, which cannot be considered to have been established, the Pollegar Pension of the family is no private property and cannot, in an analogous manner, be inherited by any claimant, however remote, by sheer rule of succession. This point will be considered later in the notes. Government have decided in Government Order No. 11194-6, dated 15th January 1891 already quoted that "Neither Sadasivaraja nor Lingaraja (adopted into other families as above stated) can be held to have any claim to a share in the Hagalvadi Pension enjoyed by their father during his life time....." The claim of Sadasivaraja too has therefore to be rejected as untenable.

9. (2) *Veeraraja.*—He is the adopted son of Rajamma, sister of the deceased pensioner Sughandaraja. He therefore stands in the status of a 'douhitra' to Veerappaji, father of Sughandaraja. It is a point of law whether in the degree of kinship to the deceased Veerappaji is nearer to the deceased or remoter than Thayammaji's sons (claimants No. 6) who are 'douhitras' to Basavalingaraja, brother of the deceased. This claimant belongs to another family and cannot claim a share in the Hagalvadi family. If a born son of the family, for instance, Sadasivaraja cannot claim a share of his own father's pension, on the ground of his adoption to another family, how can a person neither born in nor adopted into the family claim a share in that family pension, especially when he is far removed in kinship to the deceased. Hence the claim of Veerappaji has also to be rejected. He is much less entitled to it than Sadasivaraja. Douhitras as such are not entitled to succeed—*vide* para 3 *supra.*

10. (3) *Parvathammaji.*—She is the sister-in-law of the deceased being his brother Basavalingaraja's widow and of all the claimants to the pension under consideration belongs directly to the family. Her contention that "all the other claimants except Sadasivaraja are all bogus persons who are *not related to the family at all*" appears well-grounded. She is already one of the pensioners of the family being given the pension of Rs. 80 of her husband after his demise. She appears to be *the rightful heir to the pension of the deceased* but the only point to be considered is whether, being a woman without male children, she is in need of any more pension than what is allowed for her maintenance since the main idea of the scheme of these pensions is to afford proper maintenance for the members of the family.

11. (4) *Mr. M. V. Shivappa.*—This person is the son of one Veeranna alleged to be the uterine brother of Veerappaji. We only know of Veerappaji from the records as the *adopted* son of Soogappah (the original holder of the pension of the family) in which capacity he enjoyed the pension till his death. It is not known from the records who the natural father of Veerappaji was, how many children he had, etc. These are, in fact, extraneous to the consideration of any claim to the pension of the Hagalvadi family. Since Veerappaji's death, there had been so many vacancies in none of which did Shivappa or any member of his (Shivappa's) family put in a claim. He has now appeared on the scene in a somewhat dramatic suddenness. At this distance of time, it is useless to go back and find out the

antecedents of this claimant and test the veracity of his alleged relationship to Veerappaji. This claim has to be dismissed as pretentious to a degree and as not deserving of consideration.

12. (5) *Nanjundaraja.*—He bases his claim on two grounds—(i) He styles himself as the grandson of one Madappaji alleged uterine brother of Veerappaji, adopted son of Soogappaji. It is alleged that both Veerappaji and Madappaji (and Mr. Veerappa, father of Shivappa—Claimant No. 4 and yet another) were the sons of Sidda Chennabasavappa, alleged brother of Soogappah. From the records available in this office, it is gleaned that Soogappah had a brother Chennaveerappa who had a pension of his own. He adopted a boy by name Nanjappa who enjoyed the pension for sometime and died. His pension was enjoyed by his widow till her death (*vide* para 3 of the notes *supra*, *vide* page 5 file No. 104 of 1892-93). The alleged brother Chennabasavappa of Soogappah and this branch of the family is not borne out by the records. Even if this is so, it is not clear how they could have kept quiet so long without preferring their claims with better show of reason when vacancies occurred from time to time earlier after the demise of Soogappah and others. The geneological tree produced by the party does not tally with the one available in this office records and has therefore to be rejected as fictitious. The whole claim appears so extraordinary and pretentious that it does not seem worthwhile at this distance of time to examine the validity of the claim.

(ii) The next ground is that Nanjundaraja is the adopted son of the deceased Sughandaraja. A copy of the regularly registered deed has been produced. But it suffers from the following defects as observed by the State Huzur Treasury Officer :—

(*a*) that previous approval of Government was not taken for adoption which is necessary to deserve a consideration of his claim to the pension,

(*b*) that the adoption took place on 6th May 1929, just a fortnight before the death of Sughandaraja but that the instrument remained unregistered till nearly six months after his death, and

(*c*) that he was not nearest of kin to the deceased and did not belong to the same family.

13. The fictitious nature of the geneological tree produced by the party with a plausible attempt to trace his relationship to the deceased coupled with the suspicious nature of the adoption deed as observed by the State Huzur Treasury Officer and its belated registration seem to render the whole claim spurious.

14. There is also another aspect to be considered in this connection. Sughandaraja died on 20th May 1929. Sadasivaraja claimed his properties. The Amildar's order adjudging him as the proper claimant is dated 24th June 1929 while the adoption deed is dated 6th May 1929. The death of Sughandaraja was sufficiently well-known at least to those who were in any way connected with him. Even Thayamma, Sughandaraja's brother's daughter ran up to the place to claim the property of the deceased. It is unbelievable that Nanjundaraja, if an adopted son, so called, could have been unaware of all this. He did not put in his claim before the Amildar at the time nor has he satisfactorily explained why he did not or could not. There is thus a suspicion that the whole thing is a clever concoction pieced together after Sughandaraja's death calculated to create a claim to the properties and the pension of the deceased. This claim under the circumstances has to be rejected.

15. (6) *Rajasekhara and his brothers.*—These are sons of Thayamma, daughter of Basavalingaraja by his second wife and step-daughter of Parvathammaji, claimant No. 3. Thus they are grandsons or "Douhitras" of Sughandaraja's elder brother. These belong to a separate family altogether; hence they have no title to the pension of the Hagalvadi family. Sadasivaraja No. (1) has at least the claim of having been born in the Hagalvadi family, but is denied the rights of the family on the ground of his adoption to another family. In this case, the claimants have not got even this circumstance to back them up. These have thus no better claim than, for instance, Veeraraja no. (2), since both belong to separate families and are related to Hagalvadi family through females. The relationship as "Douhitra" does not arise at all in the devolution of Pollegar family pensions,

which are not, it has to be noted, private property to be inherited by the law of succession. Even if a "Douhitra" has a claim, assuming for argument, he is not directly a "Douhitra" of the deceased pensioner but only of his brother. These therefore cannot perhaps be considered to have any claim for the pension of Hagalvadi family. No instance is traceable of a 'Douhitra' *as such* ever inheriting such pensions *vide* also para 3 of the notes *supra* and Endt. dated 24th September 1883 rejecting the claim of a Douhitra to Basamma's pension.

16. The State Huzur Treasury Officer raises another point, *viz.*, whether the whole pension of Rs. 270 per mensem should be registered or only Rs. 160 rendered vacant by the demise of Sughandaraja or this plus Rs. 30 *that was being allowed to Devammaji.*

17. The pension of Rs. 80 has been granted to Parvathammaji and cannot be available till her death.

18. The allowance of Rs. 30 granted to Devammaji is available, since she is reported to have died recently. In the order dated 24th September 1903 sanctioning an allowance of Rs. 30 to her, it was stipulated that she should enjoy it for life "subject to reversion to the counter-petitioner (Basavalingaraja) or other representative of the family after her death." No claimant except Parvathammaji can be said to represent the family now and if any body is entitled to it, it is she (during her life).

19. Before proceeding further, it may be noted that the report of the State Huzur Treasury Officer has not examined the allegation occurring in para 7 of the statement filed by Suddamadappaji (representing Nanjundaraja No. (5)), that the deceased Sughandaraja was married to a daughter of Soolagiri Zamindar but owing to domestic bickerings they had separated; it is also stated elsewhere that Sughandaraja never married and died as bachelor, *vide* page 6 of Sir Puttanna Chetty's letter on behalf of C. 6 and also petition of C. 3. In the absence of any judicial separation, she, as the widow of the deceased, will be entitled to the pension if she is alive. Whether this is true or false and if true, whether she is alive or dead and other particulars of this connection of the deceased have to be ascertained. It is possible that, being far away, they are unaware of all these proceedings. This aspect may perhaps be required to be examined by the State Huzur Treasury Officer, with a view to secure an assurance that there will be no claim from this alleged quarter after the decision is taken.

20. The report of the State Huzur Treasury Officer treats the pension throughout as if on a par with private property and dwells at length on the relative merits of the claimants according to law of succession by inheritance.

21. The foremost and the most cardinal principle to be considered in the devolution of Pollegar pensions is *whether the pension runs in the same family*, "a result which is highly desirable on grounds other than those of mere confirmity to Hindu Law." The question of Hindu Law of inheritance comes in for a consideration only after this principle is assured. Even for a recognition by Government of an adoption into a Pollegar family, this is the supreme test—whether it has the effect of keeping the pension within the family.

22. There is another point to be noted also. It is gathered that when Mr. L. Bowring gave an increase of 25 per cent to the stipends, he laid down that it was "subject to the condition that those paid to female incumbents will lapse on their demise." This was reiterated in 1880 when another increase was ordered ".....That the stipends held by females should lapse on their demise. This, however must be considered as applying only to those cases in which stipendaries have no issue or heirs"—This principle is being observed in actual practice.

23. These two principles form the basis for the consideration of this and similar other cases.

24. To begin with, the pension of Rs. 160 held by Sughanandaraja may be considered. The claim of Nanjundaraja as the adopted son has already been examined and pointed out as not deserving of consideration. The possible survival of an alleged wife, a daughter of Soolagiri Zamindar and her claim cannot be examined in the absence of details on this behalf. There is no male member of the family to inherit the pension. The family of Sughandaraja and that of his brothers have run out and become extinct. The only pension known to belong to the family is Parvathammaji, widow of Basavalingaraja who is already the recipient

of a pension of Rs. 80 held formerly by her husband. The widow of a pensioner is entitled to maintenance out of the family stipend and it is usually granted to her for life and lapses after her death, if she should leave behind no issue or heir. Accordingly, the pension of Rs. 160 has to be given to this claimant for life or *it should lapse to Government forthwith*—all other claimants belong to other families and are remote in relationship to the deceased. Their claims are untenable and have perhaps to be dismissed as such.

25. Secondly, there is the stipend of Rs. 80 now held independently by Parvathammaji. Since the pensioner is alive and is the registered holder of it, the pension is not yet available for consideration in any manner.

26. Thirdly, as regards the allowance of Rs. 30 of Devammaji, the same has to lapse since there is no representative of the family to get it as already pointed out.

27. In conclusion, it may be stated that the interests of each claimant are so divergent and independent of one another and appear to belong so entirely to families other than Hagalvadi that interests and integrity of the family, if any, cannot perhaps be subserved by the grant of the pension to any claimant now coming forward nor can any of them be expected to maintain the surviving members of the family, if any, out of the pension which (maintenance) is really the one object with which it is granted. Under these circumstances, the pension of Rs. 160 rendered vacant by the death of Sughandaraja and the allowance of Rs. 30 released by the demise of Devammaji *have perhaps to lapse to Government leaving* Parvathammaji, the widow of Basavalingaraja to enjoy her share of pension of Rs. 80 *till her death* with such additions thereto, if at all as Government may consider necessary as the last surviving widow of the family out of the pension of Rs. 190 (Rs. 160 plus Rs. 30) to lapse as explained above. After her death the whole pension of Rs. 270 will lapse to Government and the Hagalvadi family has to be considered as extinct for the purposes of Pollegar pension, on her death.

28. Submitted for orders.

B. V. S.,
17-9-30.

29. The decision in this case depends upon the view taken in respect of the following principles:—

(1) Whether the pensions granted to the Pollegars of Hagalvadi are hereditary;

(2) If they are not entirely lapsable, whether the succession should be regulated by Hindu Law under the principles of Mitakshara;

(3) whether succession to pension should be allowed, if they are to be granted to persons not forming a part of the original family;

(4) Whether the succession to these pensions should be regulated by the principles governing the devolution of Impartible Estates.

These points may be taken up after obtaining or finding effect as below.

30. It would appear from the file that before the question is finally settled, it would be necessary to get information as to whether Sughandaraja was married or not in view of the contradictory statement made in para 7 of the statement of Suddamadappa, while Sir K. P. Puttanna Chetty states that he died a bachelor.

31. The State Huzur Treasury Officer might be requested to investigate and send up a finding of fact on this question so that the Legal Remembrancer may be consulted with reference to the issues raised and the pension case finally settled in conformity with previous practice and usage.

A. N. R.
8-12-30.

Financial Secretary.

32. I have carefully gone through the case and the records placed in the file.

33. The resume of the history of the case given by the State Huzur Treasury Officer in the first-thirteen paras of his report is fairly correct.

34. There are two points for disposal—

Firstly, the disposal of the pension of Rs. 160 per mensem drawn by the last holder Sughandaraja, which has fallen vacant after his death on 20th May 1929;

Secondly, the devolution of the pension of Rs. 30 per mensem granted as maintenance allowance to Devammaji, which has also fallen vacant since her death on 22nd March 1925.

35. It is unnecessary to consider the question of the disposal of the 3rd share of the family pension now drawn by Parvatammaji. So long as she is alive, we need not compare the issues by mixing this up with the above two questions which alone are for settlement now.

36. There are several claimants to the two vacant pensions; Six as the State Huzur Treasury Officer states and nine as the statement of one Siddamadappaji alleges.

37. The views and conclusions of the State Huzur Treasury Officer as regards the several claimants except the 6th, *vide* paras 14-22 of the report seem to me to be correct and may be accepted. There remains only the claim of C. 6, which he discusses in paras 23 to 28. His conclusions and recommendations are contained in paras 29, 30 and 31. His view is—that on the death of Sughandaraja and Devammaji, the pensions drawn by them should be merged once more in the corpus of the family pension and the next succession should be traced to the last holder who enjoyed the entire family pension. He would, however, exclude the widow of the said last holder, who is in receipt of a part of the family pension, as well as his daughters though alive, and nominates at once the daughter's sons of Basavalingaraja, as the preferential heirs of the two vacant pensions immediately and possibly also of the pension of Rs. 80, drawn by Parvatammaji after her death.

38. These propositions appear to me to be rather curious, supported neither by law nor by precedent.

39. Pollegar pensions are being continued *at the discretion of Government* so long as there are legal heirs. The general principles governing the devolution of such pensions are based on the Hindu Law of succession, life pensions granted to widows being generally lapsed to Government after the death of the recipients.

40. In the present case, I should think that succession should be traced to the last holder, Sughandaraja, in regard to the pension of Rs. 160 drawn by him, and if there is no legal heir to him to whom the pension could be continued, it should lapse to Government.

41. I do not think that claimants No. 6 are legal heirs to him, as rightly contended by Siddamadappaji (*vide* page 7 of the statement) and that the view of the State Huzur Treasury Officer can be accepted. Their claims have to be rejected like those of the others in respect of the devolution of this pension. If Sughandaraja had validly adopted anybody as his son, and that person had established his claim, surely the vacant pension would have gone to him in preference to any one claiming through Basavalingaraja.

42. Had Sughandaraja left a widow and had she pressed her claim, it would have been considered in the same way as Parvatammaji's.

In the absence of legal heirs to Sughandaraja, on whom the vacant pensions could have been devolved in fairness to the family, the only proper course left is to lapse them to the State.

43. The decision of Government in regard to the pension granted to Devammaji for life was that it should remit after her death to 'Basavalingaraja other representative of the family.' The former is dead. The last male holder who was in enjoyment of the pension was Sughandaraja and there is no legal representative to him, whose right has been established before the State Huzur Treasury Officer. This pension should also lapse to Government.

44. In the result, the claims of all the pensions who have not come forward for the continuance of the vacant pensions in their favour may be rejected.

B. S.
17-1-31.

Third Member through Legal Remembrancer.

45. Claimants No. 6 are the last holder's brother's daughter's sons and are according to the Mitakshara Law, heritable bandhus (*Vide* Gour's Hindu Code, pages 1302 and 1359). In 18 W. R. page 331, the Calcutta High Court has held that a brother's daughter's son succeeds as heir, under the Mitakshara, in the absence of nearer heirs.

N. R. J.
4-2-31.

46. A brother's daughter's son is recognised as a legal heir under the Mitakshara Law, and the case represented in 18 W. R. 331 (Doorya *vs.* Janaki) is the leading case on the subject, and Text writers have accepted the decision as correct. *Vide* Mulla's Hindu Law (2nd edition) p. 46.

The brother's daughter's son is classed as an Atma Bandhu and is superior to other heirs.

P. M.
4-3-31.

The facts of this case have been exhaustively dealt with in the report of the State Huzur Treasury Officer and in the notes in the preceding sheets. I request kind reference to my note dated 17th January 1931 wherein I have expressed the view that the pension and allowance which have fallen vacant should lapse to Government in the absence of direct legal heirs.

A brief history of the case is as follows :—

Veerappaji was the original registered pensioner of the Hagalvadi Pollegar family. On his death it was continued in the Government Order dated 9th April 1878 in the name of his eldest son Basavalingaraja, "for the support of the deceased's family consisting of two widows, five sons and two daughters." Subsequently in 1891 Government rejected the claims of Sadasivaraja and Lingaraja, two sons of the deceased Veerappaji by second wife, to a share in the family pension. The whole pension of the family amounting to Rs. 270 was registered in the name of Basavalingaraja for the benefit of the rest of the family. Owing to dissensions among the family members, this pension was parcelled out. A sum of Rs. 30 was granted as maintenance allowance to Devammaji, the second wife of the late Veerappaji, and the balance of Rs. 240 was divided equally between Basavalingaraja and his two brothers, Sughandaraja and Chennaveeraraja. After the death of Basavalingaraja, his separate pension of Rs. 80 was conferred on his wife Parvathammaji (claimant No. 3) who is still enjoying the pension and is one of the claimants for the vacant pensions now under disposal.

Chennaveeraraja having died without issue, his share of pension was transferred to Sughandaraja, who at the time of his death was drawing Rs. 80 plus 80 or Rs. 160. The disposal of this pension is one of the points for orders.

Devammaji who was granted the maintenance allowance of Rs. 30 having also died, the disposal of this allowance is another point for consideration and orders. In the order sanctioning the allowance, it was stated that it should revert on her death to Basavalingaraja or other representative of the family existing at the time.

The question therefore is, who is the nearest heir or legal representative of the family to whom the pension drawn by Sughandaraja, *viz.*, Rs. 160 as well as the maintenance allowance of Rs. 30 drawn by Devammaji may be continued.

The claims of Nos. 1 to 5 have been rightly rejected by the State Huzur Treasury Officer and I agree with him.

The claimant No. 5 represents through his guardian and counsel that he is the adopted son of the deceased, Sughandaraja. It is a well established rule that adoption for purposes of recognition of title to Pollegar pensions should be made only with the consent of Government. Such approval not having been obtained in this case, the petitioner's contention cannot be accepted. He has put in a petition for being given an opportunity for hearing to represent his case through counsel.

Claimants No. 6 the daughter's sons of Basavalingaraja have preferred through their guardian Sir K. P. Puttanna Chetty a memorial dated 30th January 1932 supplemental to the representations made to the State Huzur Treasury Officer.

Their case briefly is:—

(1) Succession to the vacant pension should be traced from the last registered holder of the full pension of Rs. 270, Basavalingaraja.

(2) The petitioners who are his Douhitras are the rightful claimants for the family pension and should be preferred to other distant heirs.

(3) The pension should not lapse to Government merely because of the absence of legal heirs in the male line.

(4) The petitioners will have no objection to the pension being continued in favour of Thayammaji, their mother, if Government deem fit to do so.

The legal opinion recorded from time to time in regard to devolution of Pollegar pensions is that they are not in the strict sense of the term heritable property and that it is within the discretion of Government to continue the vacant pensions in whole or in part among the heirs of the deceased pensioners. In cases where there are no near heirs natural or adopted, nor any members of the family who are dependent upon the deceased's pension, Government in the exercise of their discretion have lapsed the pension.

The points for consideration in this case are:—

(1) From whom should the succession to the vacant pension be traced.

(2) If there are no near heirs to the last holder, nor any members of the family dependent on the vacant pension, should it not be lapsed to Government?

As regards the first point, it may be pointed out that Basavalingaraja was at no time the beneficiary for the full pension of Rs. 270. The pension was registered in his name for the support of the whole family including himself. When it was partitioned he was entitled to only Rs. 80 out of it and he continued to draw the same till his death. After him, his widow, Parvathammaji is in receipt of the said pension.

Sughandaraja was in full enjoyment of the pension of Rs. 160 which has now fallen vacant. And under the general principles of Hindu Law, succession to the vacant pension should be traced from him. In this view, the claims of the petitioners No. 6 will have to be considered not as Douhitras of Basavalingaraja but as the brother's daughter's sons (Athma Bandhus) of the deceased, last holder.

As pointed out in the memorial there is a precedent of Pollegar pension being continued to a daughter's son in preference to the agnates. But in that case, the daughter's son was in receipt of a portion of the pension even during the life time of the previous holder. The office has not been able to trace any case where a distant 'Athma Bandhu' like the brother's daughter's son has been given the deceased's pension. It has not been shown that these claimants had at any time participated in or were dependent on the family pension.

If, as contended, Basavalingaraja be considered as the last registered holder of the entire pension, it cannot be understood how the daughter's sons or even the daughter could exclude the widow of the previous holder or her own daughter who is alive and capable of inheriting. This is however a legal matter which arises as a side issue. I do not wish to express any opinion on it.

Having considered the question in all its aspects, I am respectfully of the opinion that the pension suspended by the death of Sughandaraja and the allowance of Rs. 30 granted to Devajammanni should lapse to Government in the absence of near male heirs natural or adopted to the last registered holder, Sughandaraja.

First Member. B. S.

31-1-1932.

These pensions are intended for the maintenance of the families of original Pollegars. When a family becomes extinct by the absence of natural or validly adopted male heirs, the justification for the continuance of its pension ceases. Whether Basavalingaraja or Sughandaraja is taken as the last holder, this Pollegar family has ceased to exist, as neither has left any male issue. If succession to these pensions is regulated as in the case of property, the pensions would have to be continued for all time and their benefit allowed to persons very remotely connected

with the original families, and there is no need for adopting this procedure. Instances of lapsing to Government Pollegar pensions when there are no male heirs, are not uncommon and in a case of this family itself the claim of a Douhitra was rejected.

In these circumstances, I agree with the views expressed by the Financial Secretary.

Sir Puttanna Chetty has made a representation on behalf of his daughter-in-law and grand-sons on the ground that the latter are entitled to the pension as Douhitras. This claim has been fully examined in the above notes.

May be submitted to the Dewan.

M. N. K.,
3-2-32.

Dewan.

I agree with the Member.

M. M. I.
16-2-32.

Opinion of Rajadharmapravina Diwan Bahadur K. S. Chandrasekhara Iyer, Esq., B.A., B.L., Retired Chief Judge of Mysore.

The facts are fully discussed in the office notes. The report of the State Huzur Treasury Officer is exhaustive, but savours in some places of special pleading.

I am inclined to agree entirely with the First Member and the Financial Secretary, and to hold that the various claims put forward are all of them inadmissible.

Of the two items of pension involved, the allowance of Rs. 30 long enjoyed by Devammaji (Veerappaji's junior widow) should now lapse with her death. Her uterine sons (one of whom is Claimant No. I) were adopted away into other families, and have no claim now to succeed to her pension, as was indeed already decided in a Government Order of 15th January 1891. The Government had at one time materially increased the Hagalvadi pension (from Rs. 148-4-7 to Rs. 270); they may very well exercise their discretion to slightly diminish it now when circumstances amply warrant such a course.

The claims urged are principally with reference to the other item of Rs. 160 standing in the name of Sughandaraja.

There is no reason whatever for enhancing the allowance of his sister-in-law, Parvathammaji (Claimant No. III): Rs. 80 per mensem, which she has been allowed to draw since the death of her husband Basavalingaraja in 1918, seems quite sufficient for her own maintenance during the remaining term of her life, after which it should definitely terminate.

Claims IV and V are evidently "bogus" claims. And it need only be added as regards Claimant No. V, that even if his adoption to Sughandaraja were a fact, it would be ineffective for want of Government sanction.

Claimant No. II, who is the adopted son of Veerappaji's daughter Rajamma, lies under a similar disqualification, his adoption not having been made with previous sanction.

There remains to consider only the case of the sixth set of claimants. These are the minor sons of Thayammaji, daughter of the previous registered Pollegar Basavalingaraja and widowed daughter-in-law of Sir K. P. Puttanna Chetty. Much is sought to be made of their being the daughter's sons or *douhitras* of Basavalingaraja. But if succession is traced, as it should be under the Hindu Law, from the *last* male holder, namely, Sugandharaja, they are only his *brother's* daughter's sons, and cannot have precedence either over Sugandharaja's sisters if any alive, or over Basavalingaraja's daughters, of whom there would appear to be two alive, namely, the claimant's own mother Thayammaji, his daughter by a junior wife, and another daughter by the senior wife Parvathammaji.

However this may be, there is the final and fatal objection to the claim that its acceptance would be quite opposed to the whole scheme and policy of Pollegar

pensions. These are pensions specifically annexed to certain ancient families that had rendered valuable service to the State, and are intended for the personal benefit of scions of those families in the true sense of the term.

It would not be right to allow them to be diverted directly or indirectly to other families who have no such claim to consideration.-

The term 'family' has a well understood significance in this connection; a man's family consists of himself, his wife, his lineal male descendants, and his unmarried daughters. It admits of no doubt that under the Hindu Law a daughter or a sister ceases on marriage to belong to the family of her birth, and becomes a member of a different family, that of her husband: *Vide* Mulla's Hindu Law 6th Edn, p. 220; also Mayne. Accordingly, Thayammaji having been married away into an entirely different family, that of Sir K. P. Puttanna Chetty, she and her sons must look to that family for maintenance, and have no claim on the Hagalvadi family pension.

There have been doubtless some few instances, in which Pollegar pensions, or portions of them, have been continued in favour of married daughters and their sons. These instances must have been due more or less to a benevolent straining of the discretion of Government in consideration of the worldly circumstances of the grantees; they cannot be regarded as constituting precedents to be necessarily followed.

It may be well perhaps to treat this as a sort of leading case and to lay down clearly the principles which should ordinarily regulate the continuance of Pollegar pensions.

12.2.32 K. S. CHANDRASEKHARA IYER.

3. *To The Comptroller—No. Fl. 6992, dated 12th March 1932, Directs that the vacant pension of Sughandaraja should lapse to Government.*

4. *To Rajasabhabhushana Diwan Bahadur Sir K. P. Puttanna Chetty—No. Fl. 6993, dated 12th March 1932 Forwards a copy of the above G. O. for information.*

5. *To Messrs H. V. Narayana Rao and B. Vasudeva Murthy, Advocates No. Fl. 6994-5 dated 12th March 1932. Informs that Government have passed orders directing that the pension should lapse.*

Letter No. S..H. T. 781, dated 11—16th August 1930, from the Comptroller to the Government of His Highness the Maharaja of Mysore, Bangalore, to the Secretary to the Government of His Highness the Maharaja of Mysore, Financial Department, Bangalore.

I have the honour to forward herewith for the orders of Government the report of the State Huzur Treasury Officer, Bangalore, in the matter of the succession to the Hagalvadi Pollegar political pension which has fallen vacant by the demise of the last holder.

Letter No. 666, dated 8th August 1930, from the Senior Assistant Commissioner in charge of State Huzur Treasury, to the Comptroller to the Government of His Highness the Maharaja of Mysore.

I have the honour to submit the following report in the matter of the succession to the Hagalvadi Pollegar pension rendered vacant by the death of H. Sughandaraj:

History of the case.—The facts of the case as gathered from the old records are briefly as follows:—

Veerappaji or Veerappa Naik, the adopted son of Soogappaji was the original barawardar of the pension in question which after undergoing changes amounted to Rs. 148-4-7 at the time of his death on 31st Dec. 1877. He had married two sisters simultaneously by name Thayammaji and Devammaji, being the daughters of Rani Devammaji, daughter of the late Coorg Raja. Thayammaji the elder wife bore three sons, (1) Basavalingaraja (2) Sugandharaja (deceased) and (3) Chennaveeraraja

and two daughters; while Devammaji the younger had two sons Sadasivaraja (claimant No. 1 in this case) and Lingaraja. Among the sons, Sadasivaraja, the elder son of the junior wife was the first to be born, Basavalingaraja, the eldest son of the senior wife being about three years younger than the former.

3. Veerappaji died on 31st December 1877. On his death, the then Khazana Bakshi made enquiries and reported in his docket No. 33, dated 29th March 1878, that the deceased Veerappa Naik, while alive, had forwarded an application on 29th December 1877 soliciting that after his death, his pension may be transferred to Basavalingaraja the eldest son of his first wife Thayammaji; that the said Thayammaji had deposed at the enquiry that she would be responsible to maintain both families from the stipend; that Devammaji the younger widow had neither appeared before him, nor applied for the pension; and that in the circumstances the pension of Rs. 148-4-7 drawn by the deceased Veerappa Naik may be ordered to be continued to his eldest son Basavalingaraja from 1st January 1878 for the support of the entire family. The recommendation was sanctioned by the Chief Commissioner in his Order No. 3, dated 9th April 1878.

4. Affairs ran smoothly for about ten years, when for the first time, on or about 3rd December 1887, the junior widow Rani Devammaji put in an application to the Dewan for a partition of the family property, on behalf of her son Sadasivaraja. This was referred to the Khazana Bakshi for report, suggesting that, an amicable settlement—to which both parties seemed to be agreeable,—might be arrived at, and litigation avoided. This wish did not however materialize, on account of excuses and postponements on either side; and the Khazana Bakshi submitted a report with his letter No. 16, dated 17th December 1889, in which he suggested that the pension might be suspended till the parties came to amicable terms. This was approved by the Dewan in G. O. No. 9850—1105, dated 13th March 1890, in which it was directed at the same time, that in the event of the parties failing to come to a decision amongst themselves, the Khazana Bakshi was to hold enquiry into the matter and report upon " the best and most equitable division of the pension among the parties entitled to the same, giving due consideration to the allegation of adoption (of Sadasivaraja) and to the needful maintenance allowance to the female members entitled to such."

5. The Khazana Bakshi accordingly submitted a detailed report in his letter No. 17, dated 8th November 1890. Government passed orders thereon in their proceedings No. 11194-6—1476, dated 15th January 1891 as follows:—

" Upon a careful consideration of the above report and *of the circumstances connected with the adoption of Sadasivaraj by Devammaji of Benares* (widow of Lingaraj of the Coorg family), and the adoption of Lingaraj by Rajammaji (widow of Somasekhara Raj of Coorg), and having reference to the fact *that the Hagalvadi pension was continued to Basavalingaraj at the special desire of the late Pollegar*, the Government are of opinion that neither Sadasivaraj nor Lingaraj (adopted into other families as above stated) can be held to have any claim to a share in the Hagalvadi pension enjoyed by their father during his lifetime and, since his death in 1878, by his eldest son Basavalingaraj by senior wife named Thayammaji.

" Under such circumstances the pension held in abeyance under the orders of 13th March 1890 will be disbursed to Basavalingaraj at once with arrears."

This Government order is quoted *in extenso* because it constitutes an important land mark in this case, and sets at rest many doubtful or contentious points.

6. The next stage in the case is G. O. No. 2—P. & A. G. F. 104 of 1892, dated 3rd July 1894, by which the Hagalvadi pension was raised to the present existing scale, *viz.*, Rs. 270 per month with effect from 1st July 1894.

For sometime all went well, but gradually dissensions arose between the brothers, and in his letter No. 7, dated 28th August 1903, the Khazana Bakshi submitted for the orders of Government, a petition dated 27th August 1903, addressed by H. Sughandaraja and H. Chennaveeraraja in which it was stated that their mother Thayammaji died two years previously, that since then, their brother Basavalingaraja who was drawing the Hagalvadi Pollegar family stipend of Rs. 270 a month, had not been supporting them properly and urging a partition of the pension of Rs. 270 per month with retrospective effect. This was followed by a telegram to the Dewan on 29th August 1903, to the same effect. In their

letter No. P. P. 52, dated 24th September 1903, Government passed *ad-interim* orders on these representations to the effect that pending detailed enquiry by the Khazana Bakshi, in the presence of both the parties, the payment of pension to the registered pensioner, may be held in abeyance except to the extent of Rs. 80 a month.

7. The Khazana Bakshi held the enquiry referred to above, and submitted a report with his letter No. 14, dated 4th December 1903, in which he recommended that "Basavalingaraja should be the Registerdar and Chief Pollegar, and that the brothers' names should be recorded as sub-sharers, entitled to receive their shares of the pension direct from Government upon their independent receipts." He added that he was "not in favour of multiplying the number of registered Chief Pollegars" *as it would "swell the list for Palace and other invitations,"* and drew attention to the G. O. No. P. P. 98, dated 12th November 1800 in which the same principles had been affirmed.

8. In the meantime, Devammaji the mother of Salasivaraja raised the question of her being given a separate maintenance which was opposed by Basavalingaraja. Government called for a report, which was submitted by the Khazana Bakshi with his letter No. 6, dated 19—20th August 1903. In the said report it was stated that "as the three grown up sons by the first wife Thayammaji are expected *to maintain the prestige of the family with the attendant progressive responsibility*" he (Khazana Bakshi) was of opinion "that Rs. 240 calculated at Rs. 80 a month be allowed to each of them, *though continued to be drawn by Basavalingaraja* and the balance of Rs 30 may be ordered to be paid to Devammaji during her lifetime *agreeably to the order of the late Chief Commissioner* already referred to (*Viz.*, No. 3 of 10th April 1878), with the proviso that the amount will revert to the Hagalvadi family after her death."

Government approved of the recommendation *in toto*, and passed orders accordingly in their Proceedings No. P. P. 53/54, dated 24th September 1903.

9. They also passed *ad-interim* orders on the Khazana Bakshi's report No. 14, dated 4th December 1903 already referred to, to the effect, that "pending final orders in the matter, the arrears of pension payable to the brothers Sughandaraja and Chennaveeraraja for six months at Rs. 80 each per month will be disbursed to them" in G. O. No. P.P. 118-9, dated 28th January 1904.

10. Final orders in the matter were also passed soon after that, by Government, in their Proceedings No. 139/40 dated 7th March 1904 in the following terms:—

"On a careful consideration of the case, the Government.....are pleased to direct that, pending further investigation on the petitioner's (Basavalingaraja's) allegation about Devammaji's circumstances in life, the orders already passed shall be duly enforced and that the balance of the *pension of Basavalingaraja* after deducting the maintenance allowance due to Devammaji, be equally divided among the three brothers, Basavalingaraja, Sughandaraja and Chennaveeraraja, and registered separately in their names.

"Opportunity must be availed of by the Officer in Charge of the State Huzur Treasury to impress upon these pensioners that *the continuance of the pension will depend upon their good conduct and respectability* and that they *must try to improve themselves by education and other ways.*

"The Huzur Treasury Officer must also use his influence to bring all such stipendiaries to *a sense of what is expected of them*, so as to educate their children and to train them up for some profession or other."

11. *The tentative* arrangement in regard to Devammaji's pension sanctioned in the above order was made *permanent* and absolute in G. O. No. P.P. 170/1, dated 21st April 1904. She was in receipt of the pension for about 22 years and is reported to have died on 22nd March 1926. The devolution of this pension is also one of the side issues in this case.

12. The brothers continued to enjoy each, his share of the pension till 27th September 1918, when Basavalingaraja the eldest died. His widow Parvathammaji applied on 31st October 1918, for a transfer of the pension in her name, stating that she was then pregnant, and that there were no other claimants except herself.

The deceased Basavalingaraja had four wives, three of whom predeceased him, Parvathammaji being his fourth surviving wife. Besides her, Basavalingaraja left another heir in the person of Thayammaji his daughter by his second wife, who was married during his lifetime alone, to Mr. Sadasivappa son of Sir K. P. Puttanna Chetty. Except these two persons, *viz.*, fourth wife Parvathammaji and daughter Thayammaji, by second wife, there were no other heirs at the time, the first and the third wife having predeceased him without any issue.

The Comptroller reported these facts to Government in his letter No. 19/42, dated 3rd January 1919, and the Government accepting his recommendation, directed the continuance of the vacant Pollegar pension of Rs. 80 a month in the name of Parvathammaji with effect from 28th September 1918 in their Order No. F. L. 3885—S. & A. 51-18, dated 10th February 1919.

13. Chennaveeraraja the third brother, died on 29th June 1920 leaving no issue, his wife having predeceased him; and Government in their Order No. Fl. 3256—S. & A. 10-21-4, dated 17th December 1921, sanctioned the transfer of his pension of Rs. 80 per month to his elder brother Sughandaraja, who also died on 20th May 1929.

Such in brief is a resume of the history of the case from the beginning up to the present time.

14. *Claimants.*—The pension of Rs. 160 per month rendered vacant by the demise of Sughandaraja, is now claimed by six persons, *viz.*,

(1) Sadasivaraja (C. 1), son of Veerappaji original Barawardar by his second wife Devammaji.

(2) Veeraraja (C. 2), the adopted son of Veerappaji's daughter Rajamma.

(3) Parvathammaji (C. 3), widow of the late Basavalingaraja the next registered holder of the pension after the death of his father Veerappaji.

(4) M. V. Sivappa (C. 4), who alleges himself to be the son of an alleged brother of Veerappaji.

(5) Nanjundaraja (C. 5), who claims to be a son of one Siddamadappaji, alleged to be the son of Madappaji alleged again to be a son of Soogappaji, and a brother of Veerappaji.

(6) Rajasekharaiya and his three younger brothers Kumaraswami, Sreekantayya and Visvanathayya (C. 6), all minors by their paternal grandfather and guardian Sir K. P. Puttanna Chetty, who claim the pension as 'Douhitras,' being the sons of Thayammaji, the daughter of Basavalingaraja, the last registered holder of the entire family pension of Rs. 270 per month.

The relationship of the claimants to one another, and the other members of the family is indicated in the genealogical tables filed by the parties. For the sake of brevity and obviate confusion, the claimants will be hereafter referred to as C1, C2, C3, C4, C5 and C6.

Bases and merits of the claims.—15. Sadasivaraja (C1) who appeared both in person as well as by his agent Mr. P. Sundaresan, B.A., L.T., and argued his case both orally as well as in writing, claims the pension on the ground (1) that he is the eldest, as well as the sole surviving son of Veerappaji; (2) that on the death of Sughandaraja, he was put in possession of all his movable and immovable properties by the Amildar of Gubbi Taluk with the concurrence of Sir K. P. Puttanna Chetty the guardian of C6, and (3) that his adoption by Rani Devammaji of Benares was declared invalid in the Benares court and it does not debar him from claiming his rights in his natural family.

The other claimants contend, that C1's mother Devammaji was not the legitimate but the *kudikey* wife of Veerappaji, that she had deserted her husband and gone away to Benares during his lifetime alone with her son; that C1 having been adopted into another family loses his right in his own natural family and that his claim if any having been *definitely* and *finally* rejected by the Government themselves, so far back as 1891, cannot be revived *now* at this distance of time.

From what has already been stated at paras 2 to 5 *supra*, it will be seen, that neither C1 nor his mother Devammaji appeared before the Khazana Bakshi, nor pressed their claims soon after the death of Veerappaji on 31st December 1877, or for a long number of years after that either. In fact they seem to have advanced

their claims *for the first time* on or about 3rd December 1887. It is also seen that two days before his death, Veerappaji had sent an application to the Khazana Bakshi, soliciting that after his death his pension should be transferred to Basavalingaraja the eldest son of first wife Thayammaji, and that it was transferred accordingly to him by the Chief Commissioner's Order No. 3, dated 9th April 1878. These facts lend considerable support to the allegations of the other claimants, regarding Devammaji referred to, in the previous paragraph. If she and her son C1 had any title whatsoever, surely they would not have slept over their rights for ten years!

However that might be, when the claim was actually advanced, as it was, on or about 3rd December 1887, the Government did not seek shelter under any *technical* grounds and dismiss it, but condoned the delay, and caused it to be *fully* investigated *on merits*; and it was only after mature deliberation that they passed the order quoted at para 5 *supra* on 15th January 1891. It will be seen from the terms of this order, that the "circumstances connected with the adoption of Sadasivaraj" (C1) were "carefully considered" and it was *held* that the adoption *was a bar* to "a share in the Hagalvadi pension." The date of this order is 15th January 1891, while the date of the judgment in suit No. 131 of 1881, on the file of the Sub-Judge of Baneres, on which C1 relies, as having declared his adoption to be invalid, is 12th February 1884. In other words, the G. O. was passed nearly seven years *after* the judgment in question was delivered. This ground must therefore be presumed to have been pressed, and duly considered and rejected at the time of the passing f the G. O. of 15th January 1891. The matter has thus become *Res Judicata*; and it is not open to C1 to revive the question now after the lapse of nearly 49 years!

As regards the second ground, which affects C6, Sir Puttanna Chetty, in his representation on their (C6's) behalf, rightly contends (i) that "his letter to the Amildar of Gubbi Taluk about giving C1 the possession of the movables, etc., was written in obvious ignorance of his (C1's) legal position as an adoptee into a foreign (Coorg) family, which later came to his knowledge, and found a place in his first memorial of August 1929 (ii) that in any case it cannot bind the minors nor affect their legal rights; (iii) much less could it create new rights in Sadasivaraj which he did not or could not himself possess; and that (iv) Government not having been a party to the letter, are not bound by it." As regards the order of the Amildar-Magistrate of Gubbi, dated 24th June 1929 in P. R. Nos. 4 and 5/28 29 which is another piece of evidence on which C1 relies, the question at issue there was to whom the movable properties of the deceased Sughandaraj which had been seized by the police, were to be delivered. The Amildar-Magistrate passed an order under section 523 Criminal Procedure Code and directed that they may be delivered to Sadasivaraj who happened to be the only claimant at the time. This order cannot, by any stretch of imagination, be construed as a "*Judicial decision*," and it cannot affect the subsisting legal rights of others in this or other properties of the deceased. In any case, it cannot affect the subsisting legal rights of C6 or any other claimants to the *political pension* which he was enjoying, and which is the immediate subject matter of dispute in this case.

Thus all the contentions of C1 fall to the ground, and his claim must therefore be rejected once again.

16. Veeraraja (C2) claims the pension on the ground that he is the son of Rajamma a sister of Basavalingaraja and Sughandaraja, and a *douhitra* of Veerappaji. But it is seen from the records as well as the statements of the other claimants and his own petition that he is not her *aurasa putra* (natural son) but that she *adopted* him on the death of her husband Somasekhararaja of Coorg family on 27th February 1905, as they had no issue, Lingaraja the brother of Sadasivaraja (C1) previously adopted, also having died. It is a well-known principle of Hindu Law that "an adoption is made *solely to the husband*, and for his benefit," even though it may be actually made by his widow after his demise; and that the result of adoption is "that it transfers the adopted son out of his natural family into his adopting family so far as regards all rights of inheritance and the duties and obligations connected therewith" (*Vide* Mayne's Hindu Law, 9th Edition, paras 112 and 164, Pages 144 and 224). In fact he is, so to say, *dead to his natural family*, and born in the adopted family. In this view, it follows that inasmuch as Rajamma was married to Coorg family, C2 has his position fixed in his adoptive

father's family (*i.e.*, Coorg family); and not his mother's family. Moreover it must be remembered that he is not Rajamma's natural son, and therefore he has not got a drop of the Hagalvadi blood in his veins. Consequently he cannot have any claim to the Hagalvadi pension on the score of propinquity or consanguinity either. He is also debarred from claiming the pension on the identical ground on which Sadasivaraja (C1) and his *natural* brother and C2's *adoptive* brother is excluded under the terms of the G. O. of 15th January 1891 quoted at para 5 *supra.*

In these circumstances, the claim of C2 has also to be rejected.

17. Parvathammaji (C3) who appeared both in person, as well as by her agent Mr. A. Narasinga Rao, and Advocate Mr. R. Venkataramiengar, represents that except herself, her natural born daughter, her step daughter Thayammaji, and the four sons of the latter (C6), there are no other heirs, that all the other claimants except Sadasivaraja (C1) *are all bogus persons* who are *not related to the family at all*, that they are being heard of for the first time now; and as the widow of Basavalingaraja, she is entitled to succeed to the entire family pension of Rs. 270, including Rs. 30 which was sanctioned to the late Rani Devammaji for her maintenance and the allowance of Rs. 80 which she is herself getting.

Some doubt is cast about her legitimacy by the other claimants who allege that she is *not* the lawfully wedded wife of Basavalingaraja but only his *kudikey* wife. Apart from this, it is a well-known principle of Hindu Law that a woman's interest in the joint family property is *limited*, that a widow is *not* a co-parcener, but only an *heir*, and even at that, she is "*only heir to her husband*," that "she can only succeed to *his* property or rights, that is, to the *property which was actually vested in him*, either in title or in possession *at the time of his death*; that she must take at once at his death, or not at all; and that *no fresh right can accrue to her as widow in consequence of the subsequent death of some one to whom he would have been heir if he had lived*" (*Vide* paras 526 and 529 at pages 762 and 765 of Mayne's Hindu Law 9th edition). Consequently C3 cannot have any claim to the pension in question, which was inherited by her brother-in-law Sughandaraja by right of survivorship, except to the extent of Rs. 80 per month which she inherited from her own husband Basavalingaraja. Moreover, she cannot claim precedence as against the (senior) 'daughter' (Thayammaji) and the daughter's sons (C6) who take a higher rank, in the list of heirs, and who are both in existence in this case. So inferior indeed is the position of the widow that it has been held in "Bengal, Benares, Madras and Mysore" that "even the Crown would take by escheat in preference to her." (*vide* Mayne's Hindu Law, 9th Edition, Page 766). In these circumstances, the claim of C3 must also be held to be inadmissible.

18. The next claimant is M. V. Sivappa who alleges that he is the son of one Veeranna alleged to be the uterine brother of Veerappaji, the original holder. The truth of these allegations, as well as similar allegations made by or on behalf of C2 and C5 are denied by C1, C3 and C6, who aver that they are *bogus persons*, *unknown to the family*, and that they have cooked up the claims, and *are putting it forward for the first time now.* It is significant that no mention whatsoever is made of any of these persons in the old records, and none of them put forward his claim at any time, during all these years when the question of the devolution of the pension in whole or in part, has been under litigation. Why did C4 or C5 or their fathers keep quiet when C1 and his mother sued for partition between the years 1887-1891? Why did they not press their claims at least on the death of Basavalingaraja on 27th September 1918, when conditions were *exactly identical* with what they are *now* or even better? Because from what has been stated already in para 17 *supra*, regarding the legal position of a widow, in regard to inheritence it will be seen that if their allegations in regard to their relationships with Veerappaji were true, they would perhaps have been better entitled to succeed to Basavalingaraja's share of the pension (Rs. 80) than Parvathammaji (C3). Does not this silence or acquiescence throw considerable suspicion on the *bona fides* of their alleged claim? Having slept over their rights, if any, during all these years, are they not *estopped* from setting them up *now* for the first time?

Besides this they have not adduced any evidence in regard to their alleged relationship with Veerappaji except their own interested statements.

19. In this connection, the following excerpts culled from a "Brief account of the Pollegar stipendiaries of the Mysore State" compiled in June 1890 by the

Khazana Bakshi, on the basis of " Sir Bowring's manuscript memorandum of 1862, printed report of 1877, and the particulars obtained from some Pollegars," will be found very interesting and useful in the elucidation of the points at issue.

" HAGALVADI AND KENCHANGUDDA.

" These two ancient principalities were annexed to Mysore by Hyder Ali and the families confined at Seringapatam until its capture by the British in 1799 *after which the surviving members Soogappa Naik and his brother Chenveerappa were provided with a pension of Rs. 135-9-9 and Rs. 22-9-7 in 1809 and 1812, respectively.*

Soogappa Naik also entered service and rose to Risaldary on Rs. 300 per mensem and Bakshy of Candachar Cutcherry. *He having married the surviving member of the Hagalvadi family*, both the families were blended into one. After his death *his adopted son Veerappa Naik* who married the two daughters of Devammaji, sister of the ex-Raja of Coorg was allowed to succeed to the pension which is now held *by one of his five sons*, the amount being 148-4-7 per mensem.

In an earlier account prepared in 1877 by Col. Tredway Clarke, Offg. Secretary to the Chief Commissioner, no mention is made of the Hagalvadi Family, but the following particulars are given in regard to Kenchangudda:

VII. KENCHANGUDDA.

This ancient principality or " Palyam " was annexed to Mysore by Hyder Ali.

In 1799 the Pollegar was granted a pension of 100 pagodas by Dewan Purnaiya, and he filled several high offices under the Maharaja's Government.

In 1826, his adopted son Veerappa Naik who married the two daughters of the late ex-Raja of Coorg, received a pension of Rs. 79-1-5 per mensem, which was subsequently raised to Rs. 148-4-7.

Another member of the family, one Basavammani enjoys a pension of Rs. 32-13-0. The total stipends of this family amount therefore to Rs. 181-1-7.

The same facts are repeated in letter No. 16, dated 17th December 1889 of the Khazana Bakshi to the Chief Secretary already referred to at para 4 *supra*. In the course of this letter he says:—

" Properly speaking Hagalvadi family has been absorbed in Kenchangudda family, Rani Ramavva the last surviving member of the former having contracted a marriage and transferred all her interests to Soogappa Naik of the latter family and *having died without a male issue.* Both the said Palleputs were annexed to Mysore by Hyder Ali and on the fall of Seringapatam, Soogappa Naik of Kenchangudda above alluded to was given by Dewan Purnaiya a pension of pagodas 100 in the Sowar Cutcherry Mootfarkatti; was in 1810 made Risaldar on Rs. 300 and afterwards promoted Bakshy Candachar Cutcherry. *He died in 1825, and his widow the said Ramavva adopted Veerappaji (said to belong to Hagalvadi family) under the authority of His Highness the late Maharaja.*

This Veerappaji succeeded to the father's pension which underwent changes and amounted to Rs. 148-4-7 at the time of Veerappaji's death which occurred in 1877."

20. The foregoing extracts,—especially the passages underlined clearly establish the following facts:—

(i) That Soogappa Naik and his brother Chennaveerappa were *the only surviving members* of both the Hagalvadi and Kenchangudda families, at the time of the capture of Seringapatam by the British, in 1799.

(ii) The brothers *became separated*, and Soogappa Naik was provided with a pension of Rs. 135-9-9 in 1809, and Chennaveerappa with a pension of Rs. 22-9-7 in 1812.

(iii) That the pension, the succession to which is under dispute, is no other than the aforesaid pension of Rs. 135-9-9 granted *separately* to Soogappa Naik, and enhanced suitably from time to time.

(iv) That by the marriage of Soogappaji with Ramavva, the only surviving member of the Hagalvadi family, the two families of Hagalvadi and Kenchangudda became blended into one.

(v) That they had no issue and consequently Ramavva, Soogappaji's widow *adopted* Veerappaji after her husband's death in 1825.

(vi) That the authority of His Highness the late Maharaja, was obtained for the adoption.

(vii) That Veerappaji succeeded to the pension in question by virtue of the aforesaid adoption.

21. Who this Veerappaji exactly is, cannot be made out from the papers available in the old records. But granting that he is the same person he is described to be by C2, C4, and C5 in their statements, as well as the genealogical trees which they have furnished, that is to say, that he is the eldest son of Siddachennabasavappa Naik (Sivanappaji) and the elder brother of Veeranna the father of Sivappa (C4) and Madappaji the grandfather of Nanjundaraj (C5), and that this Siddachennabasavappa *alias* Sivanappaji is the same person as he, who is described as Chennaveerappa, the brother of Soogappaji in the "Brief account" referred to at para 19 *supra*, in as much as the brothers *became separated* so far back as 1809 and 1812, it follows that C4 and C5 who claim as the descendants of this Chennaveerappa, can have no right to the *separate* estate of Soogappaji, his *divided* brother. Moreover, we must remember that although Veerappaji might have been the natural son of Chennaveerappa, by his *adoption* to Soogappaji, he becomes dead, as it were, to his natural family and is born in his adoptive family, according to the dicta discussed at para 16 *supra*. Consequently neither C4 nor C5 nor any other agnate in the *natural* family of Veerappaji can claim precedence, as against agnates or cognates belonging to his adoptive family. This is probably the reason, why C2, C4 and C5 and their ancestors kept quiet all along and they are putting forward their claim for the first time now. But this cannot be admitted. This is also probably the reason why their names are not to be found in any of the lists of Pallegars stipendiaries prepared from time to time.

22. For the same reasons, the claim of Nanjundaraja (C5), whose case was argued ably by his learned counsels Messrs. H. V. Narayana Rao and B. Vasudevamurti has also to be rejected, in so far as it is based on the ground of his being, or alleging himself to be the grandson of a brother of Veerappaji, and therefore an agnate of the deceased Sughandaraja. But he claims the pension on another ground also, *viz.*, his *alleged adoption* by Sughandaraja.

With reference to this so called adoption, it has to be noted at the very outset, that the previous consent of the Government is absolutely necessary for an adoption in a case of this kind, especially as, in the event of there being no heirs, the pension would lapse or escheat to Government (*vide* page 179 of Mayne's Hindu Law, 9th Edition). It will be seen from the extract quoted at para 19 *supra* that such consent *was* obtained in Veerappaji's own case; and the example has been followed in other cases. The principle that previous sanction is a *sine-qua-non* to the validity and recognition of an adoption, is also expressly affirmed in G. O. No. 1678, dated 29th October 1887 as follows:—

"The rule of Hindu Law, which requires the previous sanction of the sovereign to an adoption .....and which prescribes that the boy adopted shall be the nearest of kin to the adoptive father, *is of special importance as regards Pollegar pension*, and must therefore be most scrupulously followed in *order to ensure the recognition of any adoption as valid for the purpose of succession to a Pollegar pension*. The strict enforcement of this rule would be the means of *keeping the pension in the same family*, a result which is highly desirable on grounds other than those of mere conformity to Hindu Law."

There is no evidence to prove that such previous sanction was obtained in the present case. On the contrary, it is admitted, it was not applied for or obtained.

The so called adoption may be impeached on other grounds also, *e.g.*, want of notice to kinsmen affected like C3 and C1, although they were in Bangalore itself at the time, the suspicious nature of the transaction, which is alleged to have taken place on 6th May 1929 or just a fortnight before the death of Sughandaraja, the non-registration of the so called will and adoption deed, till nearly six months after his death, the implications arising from his remaining unmarried, etc. But it is not necessary to go into them now, since the adoption is *ab-initio* invalid for the reason just discussed, *viz.*, "want of previous sanction which is an indispensable

and fundamental *sinequanon.* In the circumstances, the claim of C5 has also to be rejected.

23. There thus remains only the case of Rajasekhara and his three brothers (C6), grandsons of Sir Puttanna Chetty to be considered. These put forward their claim as dauhitras of Basavalingaraja, the last absolute holder of the *entire* hereditary political pension of Rs. 270 per month after the death of his father Veerappaji.

The position of a daughter's son is described by Manye in his Hindu Law (9th Edition) para 562, page 823, as follows:—

"The daughter's son, though a sapinda, is not a gotraja sapinda. He is *nearer in degree*, but exactly similar in class, to a sister's son or an aunt's son, who only come in as *bandhus*. Yet, according to all systems, even those which prefer the *gotraja sapinda* as far as the seventh degree, and the samanodakas as far as the fourteenth degree to the *bandhus*, he comes in *before the brothers and more remote sapindas*. The cause of this *peculiar favour* is to be found in the old practice of *appointing a daughter to raise up issue for a man who had none*. The daughter so appointed was *herself considered as equal to a son*. Naturally her son was equivalent to a grandson, and as the merits of a son and grandson are equal, he ranked as a son. Consequently, we find him enumerated among the subsidiary sons, and taking a very high rank among them, generally second or third. Subsequently the appointment of a daughter to raise up issue for her father became obsolete. But the fact of the nearness of daughter and daughter's son remained, and their natural claim to succession on the ground of mere consanguinity recommended itself for general acceptance. The daughter's son ceased to rank as son, but he retained his place next in succession to the daughter, or where there was no daughter."

We must remember that although Basavalingaraja married four wives, he had no issue during his lifetime except Thayammaji the mother of C6 by his second wife—Parvathammaji's (C3's) daughter being a posthumous child. Consequently it is not improbable that he might have had in his mind, this old practice of appointing a daughter to raise up issue for a man who had none, and with that object married her betimes in a respectable family. However this might be, leaving surmises aside and confining ourselves only to *facts*, it is seen from the Lagna Patrika sent to the Khazana Bakshi, filed in the records that the marriage took place on 20th February '18. Mention is made of the sending of the Lagna Patrika to the Khazana Bakshi, although it may appear to be too trivial and unimportant an incident to find a place in this report, in order to show how it was *customary to notify every domestic occurrence* among the Pollegars to the Khazana Bakshi and what inferences we may draw from the significant omission to do so *only* on the occasion of the *alleged* adoption of Nanjundaraja (C5) by Sughandaraja.

But this is a digression. To take up the narrative at the point at which I left it, unfortunately Basavalingaraja died on 27th September '18 or seven months and seven days after the marriage, and before the plan and purpose he might have had in view in contracting the alliance could mature and materialize. Probably if he had lived till his grandsons (C6) were born, he might have got the pension transferred to one of them. As it was, on his death his pension was transferred to his widow as she happened to be the most preferential heir *at the time* to that *moiety*. Now that not only Basavalingaraja but also his brothers are dead without male issue, the question is, which of the existing surviving members,—Parvathammaji or her daughter, or Thayammaji or her sons C6, should succeed to the vacant family pension *in its entirety*.

Policy and Principles applicable to Pollegar Pensions.

24. The policy and principles governing the grant and devolution of Pollegar pensions, are discussed in the brief account referred to at para 19 *supra*, as well as G. O. No. 1678, dated 29th October 1887, from which it appears.

(i) "That feudatory and independent principalities were the characteristic of the country before the time of Hyder Ali who swept them away taking the chiefs and their families captives to Seringapatam and annexing their possessions to Mysore."

(ii) That they were called upon to help the British, the Nizam, and the Peshwas "in the suppression of the common enemy with the promise of restoration to their rights."

(iii) That they were *rewarded* for their services, by the British and the Nizam by their being granted *Jaghirs* or by their former possessions (Palleput lands) being "restored to them in full or in part subject to the payment of a Pesh Kush or subsidy."

(iv) That in *Mysore* "it was deemed inadvisable to restore to them their old Palleput lands, and they were accordingly granted *money pensions.*"

(v) That the devolution of these pensions is not regulated according to the ordinary Civil Law, but that *Government have reserved the right of recognition in each case.* This is affirmed in Art. 395, Mysore Civil Account Code, which says "The whole or a portion of political and state pensions, is continued to successors of holders *under the orders of Government in each case.*"

From this, it is obvious that both the Jaghirs and Zemindari estates in British India and Nizam's Dominions as well as the Pallegar pensions in Mysore had *a common origin*, and that they were granted for *political* reasons. Now *impartibility*, and *primogeniture* are the fundamental characteristics in the case of the former and there is no reason, why the same principles should not be held to apply in the case of the latter also.

25. As a matter of fact a close and careful perusal of the history of this very case, as set forth in paras 2—13 *supra* especially the extracts quoted from the several reports made by the Khazana Bakshi from time to time as well as the orders of Government thereon—clearly shows how the very same principles of *impartibility* and *primogeniture*, have indeed been the tests applied for determining devolution on each occasion on which the question of succession or division has come up before Government. Thus on the death of Veerappaji, the pension was *not divided* among *all* his sons, but it was *registered* in the name of only one son, Basavalingaraja, the eldest of the three sons who remained with him in the family down to the time of his death,—the other two sons Sadasivaraja and Lingaraja having left him during his life-time, with their mother and being adopted into other families. Even when questions were raised by the disappointed brothers firstly by Sadasivaraja, and secondly by Sughandaraja and Chennaveeraraja, Government have affirmed this policy in clear and unmistakable terms, and the pension has always been treated as an *indivisible unit*, or an *integral whole.* Thus in the G. O. of 15-1-1891, (*vide* para 5 *supra*) it is stated "The *Hagalvadi pension* was continued to *Basavalingaraja* at the special desire of the late Pallegar, etc.". Again in G. O. No. 53—54, dated 24th September 1903 after reciting the circumstances which led up to Devammaji insisting on a separate maintenance allowance for herself, Government were "pleased to direct that *an allowance* of Rs. 30 a month as recommended by the Huzur Treasury Officer (*vide* para 8 *supra* for details) be given to Devammaji out of the *family pension* with effect from the date of order, *during her life* subject to reversion to the counter petitioner (Basavalingaraja) or other *representative of the family* after her death." But for Basavalingaraja not having treated his step-mother and brothers properly, it is conceivable, that the *integrity of the pension would not have been interfered with at all.* Even in the G. O. in which it was ordered that the pension should be divided among the three brothers and registered in their names separately (*vide* para 10 *supra*) it is described as the "*pension of Basavalingaraja.*" Nor does the partition appear to have been *final* and *absolute.* Because it was distinctly stated that "The continuance of the pension would depend upon their *good conduct* and *respectability*, implying thereby that the arrangement was only *temporary* and might be terminated at any time, in the event of the grantees proving themselves unworthy of their position.

26. Not only in this case, but also on other occasions Government have time and again, indicated in clear and unmistakable terms, that the pensions should not be regarded as *personal* gifts subject to all the incidents, *i.g.*, partition, alienation, attachment, etc., to which *private* property is liable under the ordinary Civil Law by which the latter is governed, but that they are granted for *political* reasons, and they are intended not only to help the grantees to live a life of comfort and ease, but *also to maintain and perpetuate the prestige, the dignity, and the traditions of*

these ancient families. This highly desirable object would obviously be defeated, if it was open to look upon the pensions as ordinary coparcenery property, with all its attendant disabilities. Because any coparcener may, at any time, sue for partition, and at every one of these processes, *a fresh stock of descent* comes into existence; and if this goes on indefinitely, it is conceivable a time may come, when the pension may become so fragmented and minute that its identity would scarcely be discernible and it would be next to impossible to fulfil the original plan and purpose for which it was granted. Accordingly, in all such cases, succession is regulated according to the law of primogeniture; and the property devolves *on a single heir.*

27. No doubt the interests of the subordinate members of the family are not neglected, but suitable shares or allowances are carved out from the original estate without affecting its *Corpus to any material extent*, and given to these persons. But in all such cases, it is well understood, that the grant is not *absolute* but *limited to the lifetime* of the grantee or lineal descendents; and on the failure of such heirs, or on the cessation of the special conditions which necessitated the grant, the gift should revert to the principal holder, and become merged in the *Corpus* of the original property. It is for this reason, that *the estate as* a whole is always *registered* in the name of only one person, *viz.*, the eldest son or other heir in the seniormost line, on whom alone devolves the *responsibility of perpetuating the prestige, the dignity and the traditions of the ancient family.* Although shares or allowances might be given to the other members for their subsistence, they must not regard it as their main source of livelihood but look to other means to supplement their income. Accordingly, we find it enjoined in the G. O. of 7th March 1904 (*vide* para 10 *supra*) that the Huzur Treasury Officer "should impress upon these petitioners (Sughandraja and Chennaveeraraja).....that they must *try to improve themselves by education and other ways.*" In the same G. O. he is also required to "use his influence to bring all such stipendiaries to *a sense of what is expected of them, so as to educate their children and to train them up for some profession or other.*"

28. We have an illustration of all these principles in actual active operation in the case of the Yelandur Jahagir which was granted to Dewan Purnaiya for reasons similar to those on account of which these pensions were given to the Pollegars (*vide* para 24 *supra*).

29. In these circumstances we must look upon the pension rendered vacant by the death of Sughandaraja *not as his private and personal* property but as the estate really belonging to the *entire Hagalvadi family* the last full holder of which was *Basavalingaraja.* In this view, it follows that we have to trace descent from *him* and *not* from *Sugandharaja.* We have already seen who all are the heirs of the former, and how as between them, the claims of Thayammaji and her sons (C6), are superior to those of Parvathammaji and her daughter under the Hindu Law. *No doubt under the ordinary Civil law, a daughter's son takes only after the daughter.* But having regard to the *peculiar circumstances* of this particular case, it comes to the same thing whether the pension is registered *now* in the name of Thayammaji and is *afterwards* transferred to the name of her eldest son Rajasekharaiya, or it is registered straight away *now alone* in his name. The latter is perhaps the more desirable course in view of the high place given to a daughter's son as well as the fact that the attendant responsibility can be better discharged by a male heir than a female.

30. The next question is whether the whole of the Hagalvadi pension of Rs. 270 per month should be registered in his name, or only Rs. 160 rendered vacant by the death of Sughandaraja or *that plus* Rs. 30 the allowance that was being granted to Devammaji. No doubt C6 claim the entire pension of Rs. 270 per month including the allowance of Rs. 80 which Parvathammaji is enjoying under the G. O. of 10th February 1919 (*vide* para 12 *supra*). But I do not think it is either legal or equitable to deprive her of the allowance which has already been granted to her. She may continue to enjoy it during her lifetime, and the question as to who should take it after that or whether it should revert to the corpus from which it was carved out may be left over for decision according to the circumstances of the case at that time.

31. *Recommendation.*—Thus upon a careful consideration of all the circumstances of the case, I am of opinion that Rajasekharaiya the eldest of the four sons

of Thayammaji may be registered as the *Barawardar* of the entire Hagalvadi pension of Rs. 270 per month from 20-5-1929 the date on which Sughandaraja died with the proviso, that following percedents, he must support his mother and younger brothers; and that as long as Parvathammaji is alive she should continue to receive her allowance of Rs. 80 *direct* from the treasury and enjoy it separately,—the question of its devolution after her lifetime or its absorption in the *corpus* from which it was carved being left over for decision according to the circumstances of the case at that time; and I recommend accordingly.

Petition, dated 30th January 1932, from Rajasabhabhushana Diwan Bahadur Sir K. P. Puttanna Chetty, K.T. C.I.E., Retired First Member of Council on behalf of his grandsons Rajasekharayya, Kumaraswamy, Sreekantayya and Visvanathayya, to the Government of His Highness the Maharaja of Mysore, Bangalore.

HAGALVADI POLITICAL PENSION.

In the matter of the political pension of the Hagalvadi family, the petitioners, Rajasekharayya, Kumaraswamy, Sreekantayya and Visvanathayya, minors by Diwan Bahadur Sir K. P. Puttanna Chetty, Kt., C.I.E., Guardian, beg to prefer the following Memorial supplemental to those submitted in August 1929 and 8th December 1929:—

(1) In the petitions submitted as above in 1929, the petitioners have established their claim as the nearest heirs as *douhitras* of Basavalingaraja, the last registered holder of the entire undivided pensions. The petitioners are the decendants of the last registered holder and are nearer in blood to him by way of consanguinity. They belong to the senior line of the Hagalvadi family. By virtue of the doctrine of propinquity as administered under the Mitakshara Law by which the family is governed, they have an indefeasible claim to succeed to Sugandharaja. The rights of the petitioners cannot be defeated by any of the other 5 claimants.

(2) The present petitioners claim as *douhitras* of Basavalingaraja, the last registered holder of the full pension, who was the eldest son by the senior wife of Veerappaji, the original registered holder of the hereditary political pension of Rs. 270 per month. Their rights to the pension cannot be defeated by any of the other claimants. As *douhitras* of Basavalingaraja, they come in, under the Hindu Law, *before* brothers and other more remote *bandhus*. If the Hagalvadi Palyam had remained intact, and the succession to it was in question to-day—in place of the political pension which has taken its place—there is no question whatever that the eldest daughter would be the preferential heir (see Kattama Nachiar *vs.* Dorasinga Tevar, 6 Mad. H.C. 3107). Government have in their Order No. 1678, dated 29th October 1887 themselves confirmed this view of the case. In that order, they observe:—"His Highness' Government are of opinion that it would be no more than bare justice to extend to Mysore Pallegar pensions, the same rule of succession as applied to Palleput lands." In view of this declaration, the claim of the petitioners is legally unassailable.

(3) Precedent also supports the petitioners' claim. His Highness' Government have repeatedly confirmed continued political pensions in the case of daughters and daughters' sons of Pallegars who have died leaving no male issue. The following are some of the cases in which Government have granted pensions either to daughters or to daughters' sons:—In the case of Anantharamaswami, Pallegar of Chikballapur, to his daughter, Putta Parvathammanni; the pension of Venkatanarayanaswami of the same Palleput was continued by Government to his daughter Nagara Lakshmi Ammanni and her son *Seshanna*: and the pension of Muddusami Naik, Pallegar of Rayadrug was continued to his daughter's son Venkatanarayanaswami (see G. O. No. 4995-499, dated 13th December 1887; No. 8687, dated 10th November 1900; and No. 6859-65-18-4, dated 25th June 1919, respectively). These decisions of the Government recognizing the claims of daughters and daughters' sons of the last holder have been quoted in the previous petitions of the Memorialists from the history of Manjarabad and Rayadrug families.

(4) Finally it has been suggested that neither the daughter of the last registered holder of the full pension (*i.e.*, Thayammaji, daughter of Basavalingaraja and mother of the present Memorialists nor her sons, the petitioners, can claim the pension because they are not members of the same agnatic family as the last registered holder, and that for want of heirs, the pension should be declared lapsed to Government. It may, however, be stated that there is no ground for this view. It is settled law that when the Crown wants to claim by way of escheat, it must make out affirmatively that there are no heirs; (*vide* Gridhari *vs.* Government of Bengal: 12 M.I.A. 448; S.C.I. B.L.R. (P.C.) 44; S.C. 10 Suth (P.C.) 32). This means in other words that it lies upon the Crown to prove at least *prima facie* that the deceased left no heir before there can be an escheat. It has been held by a series of judicial decisions that the Crown can succeed to the estate of a deceased Hindu only when he leaves behind him no heirs recognized by the Hindu Law and the burden of proving that the deceased has left no such heirs is upon the Crown. (*Vide*, 12 M.I.A. 448; 8 M.I.A. 302, 500; (Wallis C. J and Seshagiri Iyer); Secretary of State and Surya Karanth; 30 M.L.I, 387; 3 L.W. 273; 1916 (I.M.W.N. 216); 37 Mad. 293; 45 B. 1108; 12 M.I.A. 448; and 51 Bom. 784). In *12 M.I.A. 448*, the deceased left no nearer relation than the brother of his grandmother and it was held that he was *bandhu* and that failing nearer bandhus, he was entitled to the property of the deceased as a relation of the deceased by a title of the Crown. In *51 Bombay 789*, it was held that a sister of a prostitute was entitled to succeed to her property before such property could be claimed by the Crown by escheat. In this case also, it was held affirming previous decisions that for the Crown to get by escheat it must be shown that the prostitute died without any heir or heirs at law. In *45 Bom. 1106*, it was held that blood relations at any rate succeed to the exclusion of the Crown on the failure of the husband's heirs. The Sthridhanam of a widow would go to her blood relations in preference to the Crown (*37 Mad. 293*, approved of). This decision has been followed in:—A.I.R. 1921; B. 138; A.I.R. 1926; All. 662; and 111 I.C. 521. The Memorialists herein are the daughter's sons of the last registered holder of the full pension. Both the petitioners and their mother are recognized as heirs under the Hindu Law, the daughters being placed *third* among the grade of succession among the Sapindas and the daughters' sons occupy the *fourth* place. Though they are strictly bandhus or Bhinnagotrasapindas, they inherit with Gothrasapindas and precede the mother, the father and brother and other Sapindas under the Hindu Law. This position of importance in the order of succession, the daughter's sons get by virtue of *express texts* of the Hindu Law and they succeed not as heirs to their mother *but as heirs to their grandfather*. Thus when the prepositus leaves behind him legally recognized heirs such as the daughter and her sons—as in the present Memorialists' case, the pension in question cannot legally escheat to the Crown. In fact, the heirs recognized under the Hindu Law fall under the three heads of:—

(1) *Sapindas*, including Bhinnagotrasapindas as above mentioned and specifically provided for in *express texts*.

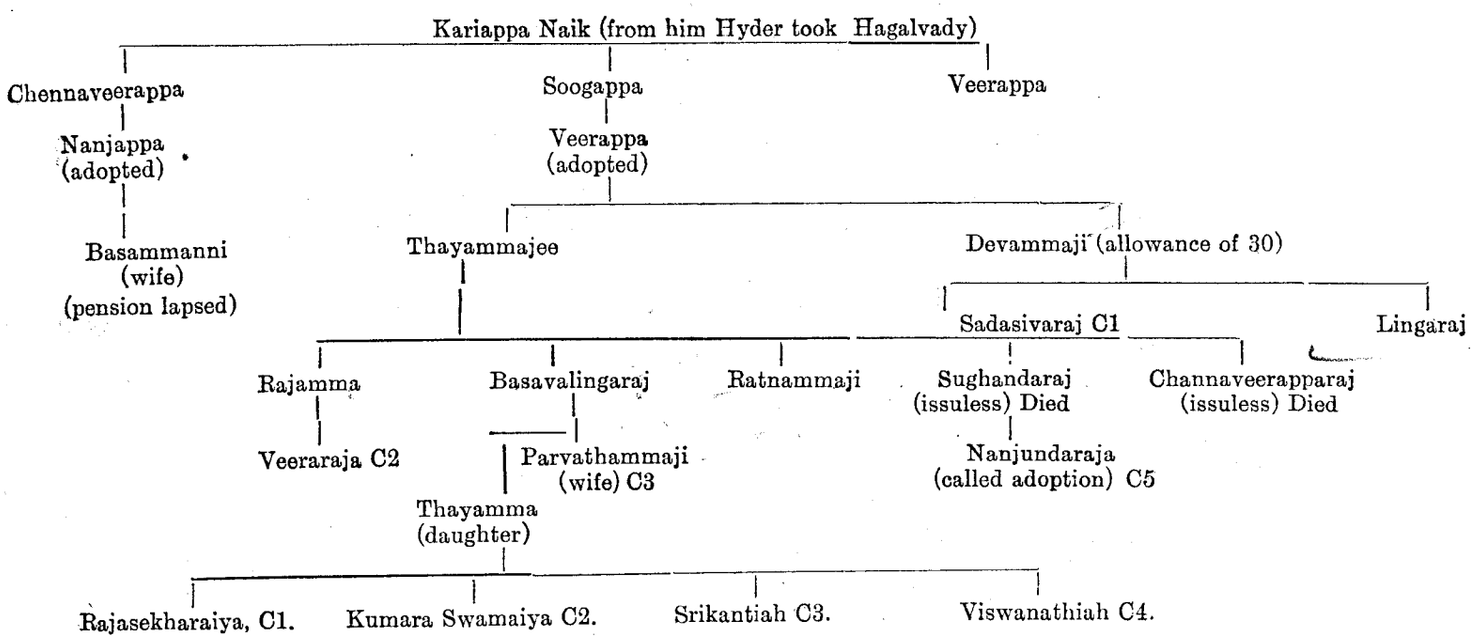
(2) *Samanodhakas* and

(3) *Bandhus*.

The order of their succession is in the order specified. It is only when heirs of the last class capable of inheriting has failed—and this must be proved affirmatively by the Crown—that the estate of a Hindu can be permitted to escheat to the Crown. The Crown has to prove in every case of escheat that no heir under any of these categories is available to claim the estate. It is only then that escheat can operate.

(5) The Memorialists, pray that the Government may be pleased to continue the political pension in favour of Thayammaji, the daughter of the last registered holder of the full pension, or her four minor sons, the present Memorialists as they might deem fit.

For which act of justice, the Memorialists will as in duty bound, ever pray.



NOTE :—As appear from Government Records.
C4—His alleged relationship not borne out by records—Hence not shown in this Geneological tree.
C5 Do He also claims as adopted son of deceased.

Petition from Nanjunda Raju, minor by next friend Channabasappa, residing at Hagalvadi, Gubbi Taluk.

The petitioner begs to state as follows:—

Mr. Sughanda Raja was the pensioned Pallegar of Hagalvadi. He died on 20th May 1929. The petitioner is the adopted son of the deceased. After the death of Sughanda Raja, the petitioner preferred his claim for the pension that was being paid by the Government to the Pallegars of Hagalvadi. The State Huzur Treasury Officer and Khazana Bhakshi held an enquiry and the petitioner learns that he has submitted the papers to the Government for final decision.

The case involves complicated questions of the Hindu Law and it is necessary that an opportunity be given for the petitioner to have his case argued by an Advocate before final orders are passed. The Khazana Bhakshi also had afforded the same facility.

The petitioner therefore humbly prays that the benign Government may be pleased to fix a date of hearing and permit the petitioner to represent his case through an Advocate.

The petitioner, therefore humbly prays that the benign Government may be pleased to fix a date of hearing and permit the petitioner to represent his case through his Advocate.

The humble petition of Sadasivaraja, Hagalvadi Pallegar of Gubbi Taluk in Tumkur District, respectfully sheweth:—

That the petitioner is the eldest son of Virappaji, Pallegar of Hagalvadi, and has been-residing in Coorg, and that after the death of his younger brother Sughandaraja on 20th May 1929, the petitioner has succeeded to Virappaji's properties, both movable and immovable, and has been in possession and enjoyment thereof, he (Virappaji) having died intestate.

2. That, on the passing away of his brother Sughanda Raja, the petitioner has petitioned the State Treasury Bhakshi with necessary records, claiming the pension that Sughandaraja was getting during his lifetime.

3. That the petitioner, being the right heir-apparent, he submits that he alone is the legitimate claimant to the pension referred to above, and none else.

4. That, despite the fact that it is about two years since his brother Sughandaraja passed away, the petitioner regrets in not having been able to get the pension to which he is entitled, as in respect of the properties of Sughandaraja, movable and immovable, which he is now enjoying.

That, therefore, the petitioner most humbly prays that the pension enjoyed by his predecessor may kindly be bestowed on him, and that, if any further evidence of his claim is required, he is in readiness to place before you all the available records in strength of such claim.

Proceedings of the Government of His Highness the Maharaja of Mysore.

READ—

Letter No. S. H. T. 781, dated 11—16th August 1930, from the Comptroller, forwarding the report of the State Huzur Treasury Officer, Bangalore, in the matter of the disposal of the pensions of Hagalvadi Pallegar Family of Rs. 160 and Rs. 30 drawn by Sughandaraja and Devammaji who died on 20th May 1929 and 22nd March 1926, respectively.

2. Memorial dated 30th January 1932, presented by *Rajasabhabhushana* Diwan Bahadur Sir K. P. Puttanna Chetty, guardian of the petitioners Rajasekharayya, Kumaraswamy, Sreekantayya and Visvanathayya, minors, requesting the continuance of the pensions in their behalf.

ORDER NO. FL. 6992—S. & A. 61-30-3, DATED BANGALORE, THE 11—12TH MARCH 1932.

The Hagalvadi family pension granted to Veerappaji *alias* Veerappa Naik was, after his death, being enjoyed in shares by his three sons by the first wife, *viz.*,

Basavalingaraja, Sughandaraja and Chennaveeraraja, and by Devammaji, his younger widow. The former were in receipt of Rs. 80 each and the latter was drawing Rs. 30. On Basavalingaraja's death without male issue, his pension was continued to his widow Parvathammaji. After Chennaveeraraja's death without issue, Sughandaraja was in receipt of his own pension as well as that of his deceased brother. Both Sughandaraja and Devammaji having died, their stipends have remained undrawn.

2. The State Huzur Treasury Officer states that six claimants have applied for the continuance of the pensions as under :—

(1) Sadasivaraja prefers his claim as the son of Veerappaji, original Barawardar by his second wife Devammaji and as the step-brother of the deceased Sughandaraja.

(2) Veeraraja alleges that he is the adopted son of Veerappaji's daughter Rajamma, sister of the deceased Sughandaraja.

(3) Parvathammaji has put in a claim as the widow of the late Basavalingaraja, brother of the late Sughandaraja.

(4) Sivappa claims to be the son of an alleged brother of Veerappaji.

(5) Nanjundaraja bases his claim as an adopted son of the deceased Sughandaraja and also as the nearest agnate of the last holder.

And (6) Rajasekharayya and his three younger brothers, all minors, by their paternal grandfather, and guardian Sir K. P. Puttanna Chetty claim as the daughter's sons of Basavalingaraja, brother of Sughandaraja.

3. After investigating the claims of the several applicants, the State Huzur Treasury Officer reports that claimants (1) to (5) have no right to the vacant pensions and that their petitions may be rejected. He, however, supports the prayer of claimants (6) and recommends that Rajasekharayya, the eldest of the four sons of Thayammaji may be registered as the barawardar of the entire Hagalvadi family pension of Rs. 270 per mensem subject to certain conditions.

4. The first claimant was adopted into another family while the second claimant is a member of a separate family altogether and both these can have no claim to the vacant pensions.

The third claimant is already in receipt of a stipend of Rs. 80 since her husband's death in 1918 which is sufficient for her maintenance.

Number 4 has had no share of the pension so far and his claim cannot now be entertained. As regards claimant No. (5), his alleged adoption to Sughandaraja (even if it were a fact) is ineffective for the purpose of determining succession to the pension, for want of Government sanction.

5. Applicants No. (6) prefer their claims as the daughter's sons or *dauhitras* of Basavalingaraja and if succession is to be traced, as it should be under the Hindu Law, from the last male holder, *viz.*, Sughandaraja, they come in only as his brother's daughter's sons and cannot have any precedence over nearer heirs.

Whether Basavalingaraja or Sughandaraja is taken as the last holder of the pension, for the purpose of tracing succession, this Pollegar family should be considered to have ceased to exist as neither of them has left any male issue. And when a Pollegar family becomes extinct by the absence of natural or validly adopted male heirs, the justification for the continuance of the pension allowed to it ceases.

Government are of the opinion that the acceptance of the claim of a daughter's son would be quite opposed to the whole scheme and policy of Pollegar pensions. These are stipends specifically annexed to certain ancient families and are only intended for the personal benefit of scions of those families in the true sense of the term and it would not be right to allow them to be diverted for the benefit of other families.

6. In view of these considerations, the pension of Rs. 160 rendered vacant by the demise of Sughandaraja and the stipend of Rs. 30 granted to Devammaji should lapse to Government.